

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-215708**DATE:** October 11, 1984**MATTER OF:** Michael J. Johnson**DIGEST:**

A transferred employee whose family continued to occupy their residence at the old duty station on a rental basis after it had been sold claims temporary quarters subsistence expenses for the period of occupancy. Reimbursement is not authorized because there is no objective evidence of intent to vacate the family's permanent residence quarters. Incorrect advice by an agency official cannot be a basis of reimbursement.

An employee claims temporary quarters subsistence expenses for the period that his family continued to occupy their residence at the old duty station after it had been sold.^{1/} Although the employee contends that he was informed by an agency official that he would be reimbursed expenses incurred under a lease-back arrangement, payment may not be made since the residence was not vacated within the meaning of the applicable regulations.

Mr. Michael J. Johnson, an employee of the Geological Survey, U.S. Department of the Interior, was transferred from Menlo Park, California, to Sacramento, California. He sold his residence in Menlo Park, California, on May 26, 1983, but was unable to occupy his new residence in Sacramento until on or after June 21, 1983. Pending occupancy of the new residence he rented his former residence from the new owner for \$30 a day. He now claims entitlement to temporary quarters subsistence expenses for his three dependents who remained in the family's old residence on a rental basis for the period from May 27 through June 21, 1983.

The agency disallowed Mr. Johnson's claim on grounds that he could not claim temporary quarters expenses for his family's continued occupancy of their

^{1/} Mr. Roy J. Heinbuch, Chief, Branch of Financial Management, Geological Survey, U.S. Department of the Interior, submitted this request for a decision.

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former residence, even on a rental basis. The disallowance was based on our decisions which hold that a transferred employee who continued to occupy a residence at the old duty station on a rental basis after its sale was not entitled to temporary quarters expenses where there was no objective evidence of intention by the employee to vacate those permanent residence quarters. Mr. Johnson has appealed the disallowance contending that when he sold his old residence he vacated it as a permanent residence.

In his appeal, Mr. Johnson states that he was informed by an agency official that when he gave up permanent occupancy of his old residence he became eligible to incur temporary quarters expenses at the same location. He further indicates that he understood that after transfer of ownership (at close of escrow) he had legally vacated his permanent residence and could be reimbursed temporary quarters expenses for occupancy of lodgings secured from any private source, including the occupancy of his old residence under a rental agreement with the new owner.

Reimbursement for the expense of occupying temporary quarters incident to an employee's transfer of duty station is governed by the provisions of chapter 2, part 5, of the Federal Travel Regulations (Supp. 4, October 1, 1982) incorp. by ref., 41 C.F.R. § 101-7.003 (1983). The question here is whether Mr. Johnson and his family may be considered to have "vacated the residence occupied when the transfer was authorized." This requirement, stated in paragraph 2-5.2c of the Federal Travel Regulations, is a condition of entitlement to reimbursement for temporary quarters.

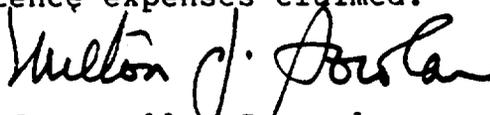
There is no precise definition of the term "vacate" in the travel regulations and each case must be considered on its own merits. We generally consider a residence to be vacated when an employee and his family cease to occupy it for the purposes intended. In considering such cases, we have consistently given great weight to the intent of the employee with respect to the location of permanent residence and the occupancy of temporary quarters. In those cases where there is evidence of action taken by the employee prior to and/or after departure from the former residence which supports an inference that the employee intended to cease occupancy of that residence, we generally have authorized

reimbursement. Conversely, we have not approved reimbursement for temporary quarters where such evidence is absent. James P. Driscoll, B-198920, November 28, 1980; Gerald L. Modjeska, 56 Comp. Gen. 481 (1977) and cases cited therein.

The record here will not support a conclusion that Mr. Johnson's family intended to vacate his former residence at the date of sale. This is not a case where an employee has been forced by circumstances beyond his control to continue occupancy of his former residence. See for example Beverly L. Driver, B-181032, August 19, 1974, where there was a breakdown of a moving van and B-177965, March 27, 1973, where temporary quarters were unavailable either at the old or new duty station. Here, as in the Modjeska case, arrangements were made in advance for continued occupancy of the employee's former residence despite the availability of temporary quarters, although such quarters may have been less convenient. We view this evidence as supporting a conclusion that Mr. Johnson's family did not intend to vacate the residence they occupied when the transfer was ordered. Rather, they made specific arrangements to continue their occupancy notwithstanding the transfer of title to a new owner.

Mr. Johnson's understanding that he had the approval of his continued occupancy plan based upon information received from an agency official is not determinative of his temporary quarters entitlement. The receipt of information, later established to be erroneous, by one dealing with a Government official, which was relied upon by the recipient to his detriment, does not afford a legal basis for payment from appropriated funds. It has long been held that in the absence of specific statutory authority, the United States is not liable for the negligent or erroneous acts of its officers, agents, or employees, even though committed in the performance of their official duties. See Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947); Posey v. United States, 449 F.2d 228, 234 (1971); Parker v. United States, 198 Ct. Cl. 661 (1972); and 56 Comp. Gen. 943, 950 (1977).

Accordingly, Mr. Johnson may not be reimbursed the temporary quarters subsistence expenses claimed.

for 
Comptroller General
of the United States